IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5431 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

G S R T C

Versus

RAHIMBHAI HUSSAINBHAI RAJPURA

Appearance:

MR ASHISH M DAGLI for the Petitioner.

MR JASWANT K SHAH for Respondent No. 1

DS AFF.NOT FILED (R) for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 07/08/2002

ORAL JUDGEMENT

The petitioner-Corporation has challenged the order passed by the Conciliation Officer and the Deputy Labour Commissioner, Ahmedabad, dated 31st January, 2001

in Approval Application No.415 of 2001. By the impugned order, the Conciliation Officer has rejected the application filed by the S.T. Corporation for granting approval.

The facts leading to the present petition are as under :-

The respondent was serving at the relevant time as a Driver in the petitioner-Corporation. At the relevant time, while on duty, it was found that he had committed misconduct by not issuing tickets to certain passengers and, ultimately, departmental enquiry was initiated against him. The disciplinary authority imposed penalty of withholding of one yearly increment for five years. However, the said order was taken in review by the reviewing authority and the reviewing authority, after reviewing the order of the Disciplinary Authority, passed an order of removal. After passing the said order, Approval Application was filed by the petitioner-Corporation for giving approval to the decision. However, the said application was rejected by the Conciliation Officer, which has given rise to the present petition.

The Conciliation Officer has rejected the application on the ground that the removal order was passed on 21.9.2001, while notice pay was given on the next day, i.e. 22.9.2001, at the time when he was on duty. Since both the said things had not been done simultaneously, i.e. removal order and the payment of one month's notice, on the said ground, the Conciliation Officer found that there is a breach of Section 33(2)(b) of the Industrial Disputes Act as the procedure has not been followed and on that ground, the approval application was rejected. In fact, I am of the opinion that the said reasoning of the Conciliation Officer is absolutely unsustainable. Mr.Dagli for the petitioner has pointed out that, in fact, at the time of passing the removal order and serving the same on the petitioner, the very moment notice pay was also given to the concerned workman. Under these circumstances, the impugned order deserves to be quashed and set aside. However, learned Advocates appearing for the contesting parties submitted that instead of sending the matter back to the Conciliation Officer and giving opportunity for raising appropriate dispute, which may take long time for adjudication, this Court may itself decide the question of appropriate punishment, which can be awarded to the respondent-workman. Since both the sides have left the aforesaid aspect of imposing appropriate penalty to this

Court, with a view to cut short the controversy, I have considered the aforesaid aspect of appropriate punishment, which can be awarded to the present respondent.

I have heard Mr.Dagli on the aforesaid aspect, as well as Mr.Jashwant Shah, for the respondent-workman. It is required to be noted that the concerned workman had not given tickets to certain passengers which was found out at the time of checking. The explanation of the workman is that because of heavy load in the Bus, he was about to issue tickets to the passengers and, at that time, checking had taken place. However, it is difficult to accept the said explanation from the respondent-workman, and, in my view, the misconduct alleged against the respondent-workman is rightly held to be proved by the Disciplinary Authority. It is, however, required to be noted that the Disciplinary Authority itself had imposed a penalty, stopping one yearly increment of the petitioner for five yeas, with permanent effect, which, of course, was reviewed by the appellate authority and considering the fact that there is nothing on record to come to the conclusion that in the past, similar types of misconduct were committed by the present respondent, in my view, it would be just and proper to impose punishment of withholding of three increments with future effect and without awarding any back wages to the respondent-workman during the intervening period. Mr.Shah, who is appearing for the respondent-workman has stated before the Court, after getting instructions from his client, who is present in the Court, that, in future, the respondent will be very careful and will see that no cause for grievance will be available to the employer and he will work sincerely and satisfactorily, with utmost integrity.

Considering the facts and circumstances of the case, in my view, the concerned workman will be now subjected to the penalty of withholding of three increments with future effect and he will be allowed to continue in service by way of reinstatement, with continuity of service. Accordingly, the S.T. Corporation is directed to reinstate the respondent within a period of one month from today and, as stated above, he will be subjected to withholding of three increments with future effect and, he will not be entitled to any back wages for the entire intervening period.

The petition is accordingly partly allowed to the aforesaid extent. Rule is made absolute to the said

extent with no order as to costs.

7th August, 2002 (P.B. Majmudar, J.)

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(apj)